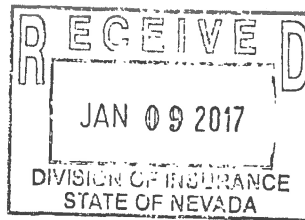


PETITION FOR REMOVAL OF ACTION UNDER 28 U.S.C. § 1441 (DIVERSITY)  
Exhibit "A"

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*Alvin D. Quinn*  
CLERK OF THE COURT

**COMP**

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Attorneys for GEORGE FLORENCIO

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

GEORGE FLORENCIO, individually,	)	
	)	CASE NO. A- 16- 745900- C
Plaintiff,	)	DEPT. NO. XXVI I I
vs.	)	
	)	
STATE FARM MUTUAL AUTOMOBILE	)	<u>COMPLAINT</u>
INSURANCE COMPANY, individually, DOES I-	)	
X, and ROE CORPORATIONS I-X,	)	
	)	
Defendants.	)	

Plaintiff GEORGE FLORENCIO, by and through his attorney of record, PAUL D. POWELL, ESQ., of THE POWELL LAW FIRM, complains against Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, as follows:

**GENERAL ALLEGATIONS**

1. At all relevant times herein, Plaintiff GEORGE FLORENCIO ("Plaintiff") was a resident of Clark County, Nevada

2. Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("Defendant") is, and at all times mentioned herein, was, a business authorized to do the business of property and casualty insurance in Clark County, Nevada, and currently active and in good

1 standing.

2 3. The true names and capacities of the Defendants designated herein as Doe or Roe  
3 Corporations are presently unknown to Plaintiff, who therefore sues said Defendants by such  
4 fictitious names. When the true names and capacities of these Defendants are ascertained, Plaintiff  
5 will amend this Complaint accordingly.  
6

7 4. At all times pertinent herein, Defendants were agents, servants, employees, or joint  
8 venturers of every other Defendant, and at all times mentioned herein were acting within the scope  
9 and course of said agency, employment, or joint venture, with the knowledge, permission, and  
10 consent of all other named Defendants.  
11

12 5. On January 4, 2011, Plaintiff was a passenger in a car that was involved in an  
13 automobile crash in Clark County, Nevada.

14 6. Non-Party Joe Murrin ("Murrin") was the driver of the vehicle in which Plaintiff was  
15 a passenger.  
16

17 7. An unknown third party driver caused the crash between his vehicle and the Murrin  
18 vehicle in which Plaintiff was a passenger.

19 8. At no time has Defendant alleged that Murrin was at fault for causing the crash.

20 9. As a direct and proximate result of the negligence of the third-party driver, Plaintiff  
21 sustained injuries to his back, bodily limbs, organs, and systems, all or some of which condition  
22 may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$10,000.00.  
23

24 10. As a direct and proximate result of the negligence of the third-party driver, Plaintiff  
25 received medical and other treatment for the aforementioned injuries, and said services, care, and  
26 treatment are continuing and shall continue in the future, all to the damage of Plaintiff.  
27  
28

1           11. As a direct and proximate result of the negligence of the third-party driver, Plaintiff  
2 has been required to, and has limited occupational and recreational activities, which have caused  
3 and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment,  
4 mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.  
5

6           12. At the time of the crash, Murrin had an automobile insurance policy (the "Policy") from  
7 Defendant which provided uninsured/underinsured motorist insurance in an amount of \$25,000.  
8

9           13. The Policy also provided medical payment coverage up to \$50,000.

10          14. Plaintiff was covered under the Policy, specifically the underinsured/uninsured and  
11 medical payments provisions.

12          15. On or about October 30, 2012, Plaintiff made demand for the available policy limits  
13 under the uninsured/underinsured motorist policy.  
14

15          16. At the time the uninsured/underinsured demand was made, Plaintiff had over \$85,000 in  
16 charges for treatment related to injuries caused by the January 24, 2011, crash, and had provided all  
17 of the medical records and bills to the Defendant.

18          17. On or about December 18, 2013, Plaintiff made demand for the available policy limits  
19 under the medical payments portion of the available policy.  
20

21          18. At the time the medical payments demand was made, Plaintiff had over \$85,000 in  
22 charges for treatment related to the injuries caused by the January 24, 2011, crash, and had provided  
23 all of the medical records and bills to the Defendant.

24          19. At the time the demands, and each of them, were made, it was clear that the value of  
25 Plaintiff's claim was at least equal to and likely greater than the Defendant's policy limits.  
26

27          20. Defendant hired Dr. Joseph Schifini to review Plaintiff's medical records and bills.

28          21. Upon information and belief, Defendant had hired Dr. Schifini on other claims to

1 perform records reviews prior to performing his review of Plaintiff's records. These are commonly  
2 referred to as forensic record reviews.

3 22. Defendant knew or reasonably should have known that as of the date Dr. Schifini issued  
4 his report regarding his review of the records, the vast majority of forensic record reviews  
5 performed by Dr. Schifini were done at the request of insurance companies and law firms  
6 representing insurance companies.  
7

8 23. Defendant hired Dr. Schifini because Defendant knew Dr. Schifini was likely to indicate  
9 that majority of the treatment rendered was not related to injury or pain caused by the subject crash.  
10

11 24. Defendant ignored the opinions of Plaintiff's treating doctors and based its valuation of  
12 Plaintiff's claim solely on the medical opinions of Dr. Schifini.

13 25. The hiring of Dr. Schifini by Defendant was used solely as a pre-text to offer Plaintiff  
14 less than the full value of his claim.  
15

16 26. Defendant's refusal to make adequate payment under both the uninsured/underinsured  
17 and the medical payment provisions of the Policy to Plaintiff was made without a reasonable basis  
18 in fact or law.

19 27. Defendant's actions, including the refusal to make adequate payment to Plaintiff was  
20 made in bad faith and for the purpose of denying the benefits of contract for uninsured/underinsured  
21 and medical payment coverage to Plaintiff.  
22

23 28. Defendant's refusal to make adequate payment to Plaintiff was an unlawful attempt to  
24 force Plaintiff to accept less money than the amount due under the Policy.

25 29. Defendant's refusal to pay Plaintiff benefits due under the applicable contract of  
26 insurance was malicious, willful, and intentional, and in fact, did cause injury to Plaintiff in excess  
27 of \$10,000.00. These actions justify an award of punitive damages.  
28

1       30. Defendant placed its interest above that of Plaintiff and did not give fair consideration to  
2 Plaintiff's interests in adjusting Plaintiff's claim.

3       31. Plaintiff has been required to engage the services of an attorney, and, accordingly, has  
4 incurred attorney's fees and costs to bring this action.  
5

6                                   **FIRST CAUSE OF ACTION**

7                                   **(Breach of Contract)**

8       32. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 31 of  
9 this Complaint as if fully set forth herein.  
10

11       33. There was a valid and existing insurance agreement issued by the Defendant for which  
12 Plaintiff was entitled to coverage.

13       34. Defendant breached the agreement by, *inter alia*, refusing to properly compensate  
14 Plaintiff.  
15

16       35. Plaintiff sustained damages in excess of \$10,000.00 as a result of Defendant's breach of  
17 the agreement.

18       36. Plaintiff has been required to retain the services of an attorney to commence this action  
19 and is entitled to attorney's fees and costs.  
20

21                                   **SECOND CAUSE OF ACTION**

22                                   **(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing)**

23       37. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 36 of  
24 this Complaint as if fully set forth herein.

25       38. There is implied in every contract a covenant of good faith and fair dealing.

26       39. Plaintiff was covered under a valid and existing insurance agreement issued by the  
27 Defendant.  
28

1 40. Defendant owed Plaintiff a duty of good faith and fair dealing.

2 41. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to  
3 properly compensate Plaintiff.

4 42. Defendant breached its duty of good faith and fair dealing by ignoring the evidence  
5 submitted by Plaintiff demonstrating he was injured in this crash.

6 43. Defendant breached its duty of good faith and fair dealing by ignoring the opinions  
7 of Plaintiff's treating doctors and adopting the opinions of Dr. Schifini.

8 44. Defendant breached its duty of good faith and fair dealing by hiring a doctor it knew  
9 would offer opinions that Plaintiff only suffered minor injury, that the treatment was not related to  
10 injury caused by the crash, and that the billing was not usual and customary.

11 45. Plaintiff has been required to retain the services of an attorney to commence this action  
12 and is entitled to attorney's fees and costs.

13 **THIRD CAUSE OF ACTION**

14 **(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)**

15 46. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 45 of  
16 this Complaint as if fully set forth herein.

17 47. There implied in every contract a covenant of good faith and fair dealing.

18 48. As an insurer, Defendant owed Plaintiff a fiduciary-like duty, and there was a special  
19 element of reliance by Plaintiff.

20 49. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to  
21 properly compensate Plaintiff and by offering substantially less than the reasonable value of  
22 Plaintiff's claim.

1           50. Defendant breached its duty of good faith and fair dealing by ignoring the evidence  
2 submitted by Plaintiff demonstrating he was injured in this crash.

3           51. Defendant breached its duty of good faith and fair dealing by hiring a doctor it knew  
4 would offer opinions that Plaintiff only suffered minor injury, that the treatment was not related to  
5 injury caused by the crash, and that the billing was not usual and customary.  
6

7           52. Defendant breached its duty of good faith and fair dealing by ignoring the opinions of  
8 Plaintiff's treating doctors and adopting in total the opinions of Dr. Schifini.  
9

10           53. Defendant breached its duty of good faith and fair dealing by hiring a doctor to review  
11 Plaintiff's medical records when Defendant knew, or upon reasonable inquiry should have known,  
12 that vast majority of forensic expert work performed by Dr. Schifini was on behalf of insurance  
13 companies or law firms that represent insurance companies.

14           54. Plaintiff sustained damages in excess of \$10,000.00 as a result of Defendant's breach of  
15 the implied covenant of good faith and fair dealing.  
16

17           55. Plaintiff is further entitled to punitive damages pursuant to NRS 42.001 *et seq.* as a result  
18 of Defendant's breach of the implied covenant of good faith and fair dealing.

19           56. Plaintiff has been required to retain the services of an attorney to commence this action  
20 and is entitled to attorney's fees and costs.  
21

22                           **FOURTH CAUSE OF ACTION**

23                           **(Unfair Trade Practices)**

24           57. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 56 of  
25 this Complaint as if fully set forth herein.

26           58. The acts of Defendant constitute unfair trade practices pursuant to NRS 686A.310,  
27 including Defendant's failure to properly settle Plaintiff's claim.  
28



1           59. The acts of Defendant herein constitute a failure to effectuate prompt, fair and equitable  
2 settlement of the claim in which the liability of the Defendant has become reasonably clear.

3           60. Plaintiff sustained damages in excess of \$10,000.00 as a result of Defendant's unfair  
4 trade practices.

5           61. Plaintiff is further entitled to punitive damages pursuant to NRS 42.001 *et seq.* as a result  
6 of Defendant's unfair trade practices.

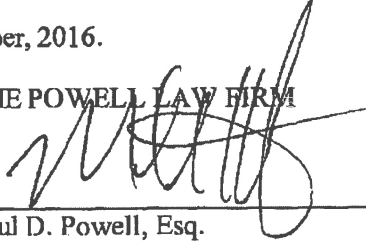
7           62. Plaintiff has been required to retain the services of an attorney to commence this action  
8 and is entitled to attorney's fees and costs.

9           WHEREFORE, Plaintiff, expressly reserving the right to amend this Complaint prior to or at  
10 the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays  
11 judgment against all Defendants, and each of them, as follows:

- 12           1. For general damages in an amount in excess of \$10,000;  
13           2. For special damages in an amount in excess of \$10,000;  
14           3. For punitive damages in an amount to be determined at trial;  
15           4. For reasonable attorney's fees and costs of suit;  
16           5. For interest at the statutory rate; and  
17           6. For such other and further relief as the Court deems just and proper.

18           DATED this 31<sup>st</sup> day of October, 2016.

19           THE POWELL LAW FIRM

20             
21           Paul D. Powell, Esq.  
22           Nevada Bar No. 7488  
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